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February 4, 1999

96-98

Magalie Roman Salas
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: Pennsylvania Public Utility Commission Regarding Area Codes 412, 610,
215 and 717, NSD No. L-97-42

Dear Mr. Salas:

Pursuant to the Federal Register, dated January 20, 1999 (Volume 64, Number 12, page number 3104), enclosed please find an original and four (4) copies of MCI WorldCom's Opposition to Petitions in the above referenced proceeding. Please date-stamp the enclosed "Receipt" stamp copy and return with the messenger.

Please do not hesitate to contact me at (202) 955-6300 with any questions regarding this filing.

Sincerely yours,

Lisa Anderson / SMB

Glenn M. Manishin
Lisa N. Anderson

Attorneys for MCI WorldCom, Inc.

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FEB - 4 1999

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)	
)	
Petition for Declaratory Ruling and)	NSD File No. L-97-42
Request for Expedited Action on the)	
July 15, 1997 Order of the Pennsylvania)	
Public Utility Commission Regarding)	
Area Codes 412, 610, 215, and 717)	
)	
Implementation of the Local Competition)	
Provisions of the Telecommunications Act)	CC Docket No. 96-98
Of 1996)	

OPPOSITION OF MCI WORLDCOM, INC.

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Dated: February 4, 1999

SUMMARY

MCI WorldCom supports the Commission's September 1998 *NPA Relief Order* and believes the FCC should reaffirm its determination to forge ahead, in its pending numbering resource optimization proceeding, on the development of national solutions addressing the problem of accelerating area code exhaust. In this light, the Commission should maintain its requirement that state commissions adopt both an implementation date and proposed method of area code relief *before* resorting to rationing or allocation of NXX Codes. States may not use number conservation as a substitute for making the difficult decisions necessary for NPA relief. Lotteries or other rationing schemes for NXXs should be permitted only as a last resort, and only in a manner that protects equitable and nondiscriminatory access to numbering resources.

At the same time, the state commissions are correct that a preclusion of all state activity on number conservation may exacerbate pressures for increasing NPA splits and overlays. Therefore, the Commission should clarify the *NPA Relief Order* to make clear that a state need not wait until all details of its NPA relief plans are finalized before exercising authority to limit premature NXX depletion through rationing or allocation. In order to ensure a coherent, integrated approach to the important NPA relief and numbering optimization issues that remain unresolved, MCI WorldCom also urges the Commission to decide the present reconsideration petitions in combination with the extensive comment record already compiled in the NRO proceeding (NSD File No. L-98-134). The jurisdictional, legal and policy issues presented in these related dockets are too intertwined to be resolved separately.

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OPPOSITION OF MCI WORLDCOM, INC.

MCI WorldCom, Inc. ("MCI WorldCom"), by its attorneys and pursuant to Section 1.4(b)(1) of the Commission's Rules, 47 C.F.R. § 1.4(b)(1), hereby responds to the petitions for clarification and reconsideration¹ of the September 28, 1998 *NPA Relief Order* in the above-captioned proceeding.²

MCI WorldCom generally supports the Commission's decision and believes the FCC should reaffirm its determination to forge ahead, in its pending numbering resource optimization ("NRO")

¹ Notice of the petitions was published in the January 20, 1999 Federal Register. 64 Fed. Reg. 3104 (Jan. 20, 1999). Parties filing petitions included the California Cable Television Association ("CCTA"), California Public Utilities Commission ("California PUC"), Colorado Public Utility Commissions ("Colorado PUC"), Connecticut Department of Public Utility Control ("Connecticut DPUC"), Maine Public Utility Commissions ("Maine PUC"), Massachusetts Department of Telecommunications and Energy ("Massachusetts DTE"), MediaOne Group, Inc. ("MediaOne"), National Association of Regulatory Utility Commissioners ("NARUC"), New Hampshire Public Utilities Commission ("New Hampshire PUC"), Pennsylvania Public Utility Commission ("Pennsylvania PUC"), Public Utility Commission of Texas ("Texas PUC") and SBC Communications, Inc. ("SBC").

² *Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Memorandum Opinion and Order, NSD File No. L-97-42, CC Docket No. 96-98, FCC 98-224 (rel. Sept. 28, 1998), 63 Fed. Reg. 63613 (Nov. 16, 1998) ("NPA Relief Order").

proceeding,³ on the development of national solutions addressing the problem of accelerating area code exhaust. In this light, the Commission should maintain its requirement that state commissions adopt both an implementation date and proposed method of area code relief *before* resorting to rationing or allocation of NXX Codes. States may not use number conservation as a substitute for making the difficult decisions necessary for NPA relief. Lotteries or other rationing schemes for NXXs should be permitted only as a last resort, and in a manner that protects equitable and nondiscriminatory access to numbering resources.

At the same time, the state commissions are correct that a preclusion of all state activity on number conservation may exacerbate pressures for increasing NPA splits and overlays. Therefore, the Commission should clarify the *NPA Relief Order* to make clear that a state need not wait until all details of its NPA relief plans are finalized before exercising authority to limit premature NXX depletion through rationing or allocation. In order to ensure a coherent, integrated approach to the important NPA relief and numbering optimization issues that remain unresolved, MCI WorldCom also urges the Commission to decide the present reconsideration petitions in combination with the extensive comment record already compiled in the NRO proceeding (NSD File No. L-98-134). The jurisdictional, legal and policy issues presented in these related dockets are too intertwined to be resolved separately.

INTRODUCTION

Under Section 251(e)(1) of the Act, the Commission has “exclusive jurisdiction over those portions of the North American Numbering plan that pertain to the United States,”⁴ but may “dele-

³ *Number Pooling and Other Optimization Methods*, Public Notice, DA-2256, NSD File No. L-98-134 (rel. Nov. 6, 1998); Comments of MCI WorldCom, Inc., NSD File No. L-98-134 (filed Dec. 21, 1998) (“MCI WorldCom NRO Comments”).

⁴ 47 U.S.C. § 251(e)(1); NPA Relief Order at ¶ 5

gat[e] to state commissions or other entities all or any portion” of this plenary jurisdiction.⁵ Consistent with these provisions, in its *Second Report and Order* on implementation of the 1996 Act’s local competition provisions, the Commission asserted full authority over all aspect of number administration.⁶ However, the Commission also concluded that in one aspect of number administration — area code relief planning — state commissions were best suited to assume primary responsibility for implementation. The Commission “authorize[d] the states to resolve matters involving the implementation of new area codes [because] state commissions are uniquely positioned to understand local conditions and what effect new area codes will have on those conditions.”⁷

Pursuant to this grant of authority, during the past few years state commissions have implemented dozens of area code relief plans.⁸ Nonetheless, traditional NPA relief methods — splits, overlays and area code boundary realignments — exact considerable costs on consumers, state commissions and society in general.⁹ The Commission itself has noted that “[c]oncerns regarding the societal costs of area code relief are well-founded, and consumers are understandably reluctant to undergo area code relief, particularly when there are inefficiencies in the allocation of numbering resources.”¹⁰ And as the Texas PUC emphasized, “[s]tates have been required to make difficult deci-

⁵ *Id.*

⁶ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, CC Docket 96-98, 11 FCC Rcd 19392, ¶ 271 (1996) (“Second Report and Order”).

⁷ Second Report and Order at ¶ 272.

⁸ Letter from Yog R. Varma, FCC, to Helen M. Mickiewicz, CPUC (Dec. 1, 1998) (“California NXX Letter”).

⁹ “Where Have All the Numbers Gone?,” Long-Term Area Code Relief Policies And the Need for Short-Term Reform, Economics and Technology, Inc., March 1998. California now has 23 area codes and Texas has implemented nine new area codes between 1996 and 1998 alone. California NXX Letter at 1; Texas PUC at 2.

¹⁰ NPA Relief Order at ¶ 21.

sions to address the ever-increasing exhaust of available numbers. Public response to area code relief ranges from mere frustration to outright hostility.”¹¹

The *NPA Relief Order* attempts to restore balance to this process by reaffirming the limits of state commission jurisdiction in connection with NPA relief planning. Coupled with the Commission’s announced plans to deal rapidly with a uniform, national solution for number pooling and other forms of number resource optimization — number conservation measures that would stem the tide of NPA exhaust — the *NPA Relief Order* both encourages states to experiment with novel approaches to NPA relief planning and adopts the fundamental rule that number conservation is not a substitute for NPA relief. States are free to propose new forms of number conservation, subject to FCC approval, but may not engage in allocation, reclamation or withholding of NXX resources from carriers except in limited circumstances in connection with a formal NPA relief plan. Thus, the Commission has reaffirmed the principle that numbering resources must be available to all competing carriers, on an equitable and non-discriminatory basis, such that states cannot deny resources to carriers in an effort to avoid making the hard choices necessary in NPA relief planning.

All of this hinges, in a very real sense, on the Commission’s commitment to establishing national guidelines for number pooling in its ongoing NRO proceeding. If the Common Carrier Bureau’s December 1999 deadline for implementation of number pooling is met,¹² then state commissions will have a realistic option to the patch-work of allocation schemes and pooling trials now in place. On the other hand, if the Commission does not act, states will increasingly be forced to make NPA relief decisions that could be unnecessary if there were different means to approach the basic

¹¹ Texas PUC at 2.

¹² Letter from A. Richard Metzger, Jr., FCC, to Alan. C. Hasselwander, Chairman, North American Numbering Council (Mar. 23, 1998).

numbering inefficiencies that have produced the acceleration in area code exhaust over the last several years. *See* MCI WorldCom NRO Comments at 6-8, 34-35.¹³ In this light, while we agree with the public policies they articulate against the consumer cost and confusion arising from repetitive NPA relief, MCI WorldCom opposes those state commissions that ask for reversal of the *NPA Relief Order*, but concurs that the Commission should clarify that a state need not adopt all details of its NPA relief plans before imposing a system of NXX allocation in the affected area code. MCI WorldCom also urges the Commission to complete its NRO proceeding and develop uniform, national number utilization mechanisms as soon as possible, in order to alleviate the pressures on state commission to deny numbering resources to carriers.

BACKGROUND

State decisions on area code relief must comply with the Commission's guidelines on numbering administration in the *Second Report and Order*,¹⁴ as well as its previous determinations in the *Ameritech Order*¹⁵ and the *NANP Order* providing for neutral and nondiscriminatory North American Numbering Plan ("NANP") and Central Office ("CO") code administration functions.¹⁶ These guidelines require that all numbering policies and rules must (1) seek to "facilitate entry" into the communications marketplace by making numbering resources available on an "efficient and timely"

¹³ *Common Carrier Bureau Seeks Comment on North American Numbering Council Report Concerning Telephone Number Pooling and Other Optimization Methods*, Public Notice, DA-2256, at 1-2 (rel. Nov. 6, 1998) ("rapid growth in demand for new area codes is a symptom of underlying inefficiencies in the manner numbering resources are currently allotted, and unless mitigated, could undermine the long-term viability of the North American Numbering Plan").

¹⁴ *Second Report and Order* at ¶ 272.

¹⁵ *Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois*, IAD Filed no. 94-102, Declaratory Ruling and Order, 10 FCC Rcd 4596 (1995) ("Ameritech Order") (disapproving of an Ameritech NPA relief plan that imposed a wireless-only NPA overlay plan and required "take back" of NXXs from some carriers).

¹⁶ *Administration of the North American Numbering Plan*, CC Docket No. 92-237, Report and Order, 11 FCC Rcd 2588, 2591 (1995) ("NANP Order").

basis; (2) “not unduly favor or disadvantage any particular industry segment” or group of consumers; and (3) not “unduly favor one technology over another.”¹⁷

The Commission issued its September 1998 *NPA Relief Order* in response to a petition from wireless carriers challenging area code relief and number conservation measures adopted by the Pennsylvania PUC in order to address the “jeopardy” (*i.e.*, projected near-term exhaust) of NXXs in the 412, 215, 610 and 717 area codes. Specifically, the Pennsylvania PUC had ordered the implementation of number pooling and “transparent” area codes in an effort to avoid splitting these NPAs.¹⁸ In addition to transparent overlays, the Pennsylvania commission also required the NXX code administrator to ration or reserve for number pooling NXX codes in area code 717, which was subject to a geographic split, as well as in the new area code created by the 717 split.¹⁹

In addition to challenging the Pennsylvania PUC’s authority to issue its area code relief orders, several wireless carriers also claimed that the area code relief and number conservation mechanisms discriminated against wireless carriers by imposing NXX code allocation requirements on carriers not presently participating, and technically unable to participate, in local number portability. Specifically, wireless carriers could not participate in the “transparent” overlay approach or number pooling because both mechanisms are based on location routing number technology, which is unavailable to wireless carriers.

Like other state agencies, the Pennsylvania PUC has made serious efforts to consider alternative methods of relieving the rapidly increasing pressure of area code exhaust and ensuring access

¹⁷ Second Report and Order at ¶ 281, 320; 47 C.F.R. ¶ 52.9(a).

¹⁸ A novel approach, transparent overlays permit the use of the NXX codes from “temporary, transparent, and fictitious” NPAs whenever a new NXX code is needed. The actual telephone number (“TN”) associated with customers in these transparent area codes would be a phone number from in the existing NPA-NXXs, and calls to these customers would be directed to the fictitious number via remote call forwarding. NPA Relief Order at ¶ 12.

¹⁹ NPA Relief Order at ¶¶ 11, 17.

by all carriers and consumers to numbering resources. Implicit in these activities is the recognition, and a correct one, that in order to truly address numbering exhaust, there must be significant changes in the fundamental manner in which numbers are assigned both in the near-term, as well as the long-term.²⁰ Thus, included in these state alternatives have been a variety of approaches, including pooling trials and other conservation methods.²¹ Indeed, as the Commission has recognized, state commissions have made remarkable contributions toward addressing the problem of area code exhaust by identifying the particular needs of their states in task forces and other forums, developing alternative approaches, and providing some, albeit limited, experiential data.²²

Nonetheless, the Commission has also recognized that there has been no consistent plan for states to follow as a guide on how to impose alternative, sustainable numbering relief that will prevent the ever-increasing exhaust situations without interfering with a cogent plan to ensure the longevity and fundamental beneficial underpinnings of the NANP.²³ Thus, the *NPA Relief Order* sought to offer state commissions “additional guidance and clarification as to the limits of their authority over area code relief and conservation as they address decisions in this area.”²⁴ This guidance was necessary to “bring about as quickly as possible national methods to conserve and promote efficient use of numbers,” while ensuring that state numbering relief activities did not “undermine that uniform system of numbering,” which the Commission determined was “essential to the effi-

²⁰ For example “[w]ith the realization that industry number assignment practices were at least partially responsible for the rapid area code exhaust in Texas, the PUC of Texas created the Texas Number Conservation Task Force and the Number Conservation Implementation Team.” Texas PUC at 6.

²¹ For example, both Illinois and New York established pooling trials within their states. In Connecticut and Pennsylvania, state commissions established “virtual pooling,” in which a pooling trial is monitored on paper only. Other states, including Colorado, established task forces to study the effectiveness of pooling. Number Resource Optimization Working Group Modified Report to the North American Numbering Council on Number Optimization Methods, § 15.10 (Oct. 21, 1998).

²² NPA Relief Order at ¶ 27.

²³ *Id.* at ¶ 21.

²⁴ *Id.* at ¶ 20.

cient delivery of telecommunications services in the United States.”²⁵ The Commission noted that “piecemeal” efforts by each state to address exhaust, if unguided, could jeopardize telecommunications services. “Substantial social and economic costs would result if the uniformity of the North American Numbering Plan were compromised by states imposing varying and inconsistent regimes for number conservation and area code relief.”²⁶

The *NPA Relief Order* narrowly circumscribed the authority of states to carry out numbering activities. First, the Commission ruled that the scope of states’ powers encompasses only the implementation of traditional area code relief (splits, overlays and boundary realignment), and that “experimental” conservation efforts like transparent area code overlays are not within the area code relief delegated to state commissions.²⁷

Second, the Commission rejected state efforts to implement conservation activities in order to prolong NPA viability and avoid the need for NPA relief. As the Commission stated, “[c]onservation measures are not, however, area code relief,” and state PUCs must “recognize that distinction.”²⁸ Moreover, “[s]tate commissions may not use conservation measures as substitutes for area code relief or to avoid making difficult and potentially unpopular decisions on area code relief.”²⁹ Hence, the Pennsylvania PUC exceeded its authority when it implemented CO code rationing and mandatory number pooling. The Commission held that a state commission ordering NXX code rationing or any other NXX conservation measure is “acting outside of its scope of its delegated

²⁵ *Id.* at ¶ 21.

²⁶ *NPA Relief Order* at ¶ 21.

²⁷ *Id.* at ¶¶ 38-39, 47.

²⁸ *Id.* at ¶ 22.

²⁹ *Id.* at ¶ 26.

authority,” but that states do have the authority to conduct voluntary pooling trials.³⁰ Accordingly, neither in those voluntary trials nor “pursuant to a number rationing scheme implemented as part of a state-ordered area code relief plan,” could states order the mandatory return of NXXs or 1,000 blocks of numbers.³¹

The Commission did recognize that in certain circumstances, “exigencies of the situation” may necessitate that state commissions have “flexibility to become involved in attempts to conserve NXX codes in order to extend the lives of area codes within their borders.”³² Accordingly, the Commission delegated to the states limited authority to order NXX code rationing in certain circumstances, incidental to NPA relief plans. Specifically, states can implement NXX code rationing only “when it is clear that an NPA will run out of NXX codes before implementation of a relief plan.”³³ Further, Paragraph 24 of the Order indicates that states can only implement NXX code rationing after: (1) developing an area code relief implementation plan with a set date for implementation; (2) determining that industry is unable to reach a consensus on a rationing plan to extend the life of an area code until relief implementation; and (3) partnering with the NXX code administrator to work out a rationing plan that may include jointly determined mechanisms, such as including a lottery or a usage threshold.³⁴

DISCUSSION

Twelve parties, including nine state commissions, filed petitions for reconsideration and clarification of the *NPA Relief Order*, primarily challenging the Commission’s conclusions in Para-

³⁰ NPA Relief Order at ¶¶ 24, 33.

³¹ NPA Relief Order at ¶¶ 24, 33.

³² *Id.* at ¶ 23.

³³ *Id.* at ¶ 24.

³⁴ *Id.*

graphs 24 and 31 of the Order that states may not implement NXX allocation schemes or engage in number conservation without the affirmative approval of the FCC. Although MCI WorldCom agrees with the Commission, we also concur that the ambiguity of the Order should be clarified such that states are not required to develop and implement all details of an NPA relief plan before adopting an NXX conservation plan in the NPA. These clarifications are necessary to ensure that states are not completely hamstrung in their numbering activities, while at the same time eliminating the incentive for states to substitute inherently unfair NXX allocation schemes for the more difficult, but equitable, process of NPA relief.

I. THE COMMISSION SHOULD REAFFIRM ITS CONCLUSION THAT STATES CANNOT IMPLEMENT NUMBER CONSERVATION PLANS WITHOUT PRIOR FCC REVIEW AND APPROVAL

Several of the state commissions have suggested that there is an apparent contradiction in the *NPA Relief Order* between the Commission's encouragement of states to develop innovative approaches to addressing area code exhaust and the prohibition against implementing number conservation plans without FCC approval.³⁵ In addition, some petitioners argue that "the FCC has not articulated a clear distinction between state conservation measures that need FCC review and conservation methods that do not," and that review of each conservation measure would be inefficient and unduly burdensome.³⁶ Petitioners have further argued that states are best-suited and should have the autonomy to decide when and how to conduct conservation plans,³⁷ and are better able than industry forums to ensure that those plans are nondiscriminatory.³⁸ As the New Hampshire PUC stated,

³⁵ Texas PUC at 11.

³⁶ *Id.* at 18.

³⁷ Maine PUC at 3; Massachusetts DTE at 7; New Hampshire PUC at 3-4; Texas PUC at 11.

³⁸ New Hampshire PUC at 5.

“[s]tate commissions are in the best position to develop NXX conservation measures to implement in order to extend the longevity of an area code . . . [as states] have a unique understanding and familiarity with local circumstances, being much closer to particular in-state needs and concerns.”³⁹

As the Commission is keenly aware, state commissions face a difficult predicament. Their efforts to craft conservation measures are understandable. “State commissions have the difficult task of assuring that adequate numbering resources are available for carriers in their states, while protecting the interests of consumers who are understandably frustrated about the burdens associated with area code relief.”⁴⁰ Perhaps not unsurprisingly, state commissions are now frustrated in the wake of an FCC decision that they perceive as “tying the hands of state commissions.”⁴¹

While MCI WorldCom appreciates the states’ position, we fully support the Commission’s conclusion that a consistent nationwide plan is essential to addressing exhaust in any meaningful way. Lotteries and other NXX rationing schemes, which are inherently discriminatory, can only be permitted in a manner that protects equitable and nondiscriminatory access to numbering resources. Moreover, in seeking longer-run solutions to the area code depletion crisis, the Commission cannot accept the risk that haphazard or inconsistent state efforts to address numbering exhaust may jeopardize the NANP or derail ongoing efforts to implement numbering optimization measures to ensure the NANP’s preservation. As the industry prepares to take on significant changes in numbering allocation in the near future, it is important that the Commission not risk jeopardizing the potential effectiveness changes. Allowing state commissions to implement any conservation method without first seeking Commission approval would surely increase this risk. For instance, as the Commission

³⁹ *Id.* at 4.

⁴⁰ NPA Relief Order at ¶ 2.

⁴¹ California PUC at 22.

cautioned, “multiple, inconsistent pooling trials through the country” could directly jeopardize future resource optimization plans.⁴²

Towards this end, as the Colorado Commission has requested, the Commission should clarify which measures are “conservation.”⁴³ For instance, the *NPA Relief Order* is somewhat ambiguous on the matter of rate center consolidation, appearing to suggest that rate center consolidation is *not* a conservation measure and therefore within the authority of states.⁴⁴ Yet a review of the petitions in this proceeding indicates that some states view rate center consolidation as permissible and some as impermissible. This is one of several matters on which FCC clarification would assist states in pursuing NPA relief planning and conservation activities during the period in which the Commission is considering development of national number pooling guidelines.

A. It Is Appropriate For the Commission to Clarify the Authority of State Commissions in this Proceeding

The Texas PUC argues that until the Commission decides on national conservation measures in the pending NRO proceeding, states should be accorded full authority to act on all number conservation and utilization issues.⁴⁵ MCI WorldCom disagrees. The Commission must use this current proceeding to keep the door open to whatever national solutions that may develop in the NRO proceeding. Enacting conservation methods piecemeal in the interim, while assisting some states temporarily, would seriously jeopardize the comprehensive resource optimization plan that is needed to really prevent exhaust of the NANP itself. In fact, if the Commission were to allow states to imple-

⁴² NPA Relief Order at ¶ 30.

⁴³ Colorado PUC at 8.

⁴⁴ In one passage the Commission encourages states to “consider other measures and activities, such as rate center consolidation, that affect number usage and may decrease the frequency of the need for area code relief,” and references, without prohibiting, rate center consolidation already undertaken by the Colorado PUC. NPA Relief Order at ¶ 29 & n.3.

⁴⁵ Texas PUC at 11.

ment conservation methods without FCC approval, some national solutions may no longer be feasible in the NRO proceeding due to conflict with prior state decisions. As a result, MCI WorldCom urges the Commission to combine its consideration of the reconsideration petitions on the *NPA Relief Order* with the comment record already compiled in the NRO proceeding, and thus to decide all NPA relief and numbering jurisdiction, legal and policy issues on a coherent and integrated basis.

It is imperative that the Commission ensure that any area code relief or conservation activity at the state level is consistent with whatever numbering resource optimization measures the Commission eventually implements. Failure to do so could jeopardize the long-term stability and uniformity of the NANP. On the other hand, given the precarious situation that states now must face, it is of utmost importance that the Commission act expeditiously in its current evaluation of conservation measures in the NRO proceeding.⁴⁶ In the meantime, the Commission should continue to strike a careful balance between preserving its own ability to implement a numbering resource optimization plan in the future and the needs of states to be able to address exhaust right now.

B. The Commission Has Ample Authority to Decide All Numbering Issues

The Pennsylvania PUC has suggested that the Commission has exceeded its jurisdictional authority by prohibiting number conservation with states. “[T]o the extent that the *Pennsylvania Order* prohibits states from ordering number conservation measures that are not interstate in nature, such as rate center consolidation, the Order should be reconsidered so as to not infringe on intrastate decisions that are clearly within the jurisdictions of state commissions.”⁴⁷ However, as discussed above the FCC clearly has plenary jurisdiction over *all* numbering resources, whether interstate or intrastate. Indeed, the Supreme Court has now held that the 1996 Act provided the Commission with

⁴⁶ *Number Pooling and Other Optimization Methods*, Public Notice, DA-2256, NSD File No. L-98-134 (rel. Nov. 6, 1998).

jurisdiction even over intrastate impacts on local competition, a ruling that effectively moots the Pennsylvania petition.⁴⁸

II. THE COMMISSION CORRECTLY DETERMINED THAT STATES SHOULD NOT ORDER NXX CODE OR BLOCK RECLAMATION

The state commission petitioners have requested that the Commission reconsider its decision prohibiting states from ordering carriers to return NXX Codes, or 1,000 blocks of numbers, and clarify the instances in which states can order NXX “reclamation,” *i.e.*, requiring that NXX Codes be returned to the numbering administrator.⁴⁹ Petitioners argue that states need to be able to order reclamation if there is a jeopardy situation and a service provider has NXX Codes that exceed that provider’s demand.⁵⁰ Finally, Petitioners suggest that there is a conflict between this reclamation prohibition and the ability of states to implement voluntary pooling⁵¹ and prepare for national pooling, if implemented by the Commission,⁵² and to implement rate center consolidation.⁵³

Taking the more important of these objections first, it is plain that the *NPA Relief Order* prohibition against block reclamation does not preclude states utilizing voluntary pooling trials. As long as states leave codes available to serve requesting carriers, a state commission can order *newly* introduced NXX codes or blocks to be withheld from assignment and saved for pooling. This does not involve “reclaiming numbers” from codes already assigned to carriers. In addition, the possibility of nationwide pooling does not necessitate that states have the authority at this time to order the

⁴⁷ Pennsylvania PUC at 10.

⁴⁸ The Supreme Court found that the Telecommunications Act of 1996 “explicitly gives the FCC jurisdiction to make rules governing matters to which the 1996 Act applies.” *AT&T Corp. v. Iowa Utilities Board*, ___ S. Ct. ___, 1999 WL 24568 (Jan. 25, 1999).

⁴⁹ Colorado PUC at 6; Connecticut PUC at 5; NARUC at 5; Texas PUC at 13; Pennsylvania PUC at 7-8.

⁵⁰ Texas PUC at 13.

⁵¹ *Id.*

⁵² Texas PUC at 14.

return of numbers. Should the Commission decide in the NRO proceeding to implement optimization measures that depend on mandatory number return, the Commission can then consider the appropriate scope of state authority in ordering returns. Finally, mandatory block return is a conservation method that raises significant competitive neutrality concerns for CLECs, which most often would have to give up more numbers than other providers, and thus necessitates that the FCC and not states determine under what conditions, if any, mandatory block return should occur. MCI WorldCom NRO Comments at 14, 39-41. That is why, as noted above, it is important to consider the pending reconsideration petitions in combination with the NRO proceeding, as the issues are closely intertwined.

The Commission should clarify two aspects of its prohibition against mandatory block reclamation. First, some state commissions appear to believe that the *NPA Relief Order* prevents states from ordering NXX return even when those NXXs have been unlawfully obtained or where they are being used in violation of state rules.⁵⁴ So long as the relevant state rules meet the FCC's guidelines for competitively neutral and non-discriminatory number administration, there is no reason to circumscribe state power over NXX "scofflaws."

Second, recently the Illinois Commerce Commission ("ICC") concluded that the *NPA Relief Order* does not preclude the ICC from continuing its current pooling trial in the 847 NPA, despite the fact that the trial is not entirely voluntary.⁵⁵ MCI WorldCom supports the Illinois trial, and agrees that the *NPA Relief Order* specifically authorizes the ICC to continue this important number pooling experiment. On the other hand, the *NPA Relief Order* does not appear to have authorized or

⁵³ Texas PUC at 15.

⁵⁴ Connecticut PUC at 5; Maine PUC at 4-5; New Hampshire at 7; Pennsylvania PUC at 8.

⁵⁵ Illinois Commerce Commission, *All Telecommunications Carriers holding 847 NXX Codes and Illinois Bell Telephone Company d/b/a Ameritech Illinois in its Capacity as Number Administrator Investigation into issues relating to the exhaustion of telephone numbers in the Chicago Metropolitan Area*, Order, 98-0497 (Dec. 16, 1998).

contemplated either the creation of new Illinois pooling trials or expansion of the pending 847 trial into new area codes. Consequently, the Commission should clarify that the ICC pooling trial was authorized in the *NPA Relief Order* but may not be enlarged or extended to new areas, consistent with Paragraph 24, without the Commission's affirmative prior approval.

CCTA suggests that in issuing the *NPA Relief Order*, the Commission violated Section 706 of the "erect[ing] barriers to entry by facilities-based CLECs seeking to serve residential customers, in violation of the central purposes . . . of the 1996 Act."⁵⁶ CCTA further argues that the *NPA Relief Order* has violated Section 251 of the Act as it "prohibits states from requiring ILECs to develop solutions to numbering problems which would facilitate competitive entry."⁵⁷ To the contrary, MCI WorldCom believes that the effect of the *NPA Relief Order* is to ensure that CLECs *do* have access to numbering resources. For instance, the Commission determined that block set-asides for pooling could only occur when state commissions left additional blocks available to provide numbers to new competitors that have customers, but no numbers. Therefore, despite CCTA's concerns, the *NPA Relief Order* is perfectly consistent with the 1996 Act's pro-competitive purposes and market-opening provisions.

⁵⁶ CCTA at 7.

⁵⁷ *Id.* at 14. Apparently, at least one commission has found that ILECs have been unwilling to provide utilization data, citing lack of state authority under the *NPA Relief Order*. Connecticut PUC at 4-5. The Commission should both request that the ILECs provide utilization data to the FCC, as well as clarify that the *NPA Relief Order* in no way limits the authority to the states to gather data from their carriers. Indeed, this is one of the areas in which state commission involvement can facilitate the Commission's efforts to implement numbering optimization.

III. STATE COMMISSIONS MUST AT LEAST ESTABLISH A DATE AND METHOD OF NPA RELIEF BEFORE IMPLEMENTING NXX CODE RATIONING

Several petitioners have requested that the Commission reconsider its decision to require states to develop an area code relief plan before implementing NXX code rationing (lotteries).⁵⁸ In particular, these petitioners are concerned that this requirement exacerbates the difficult exhaust situation in California, where the state legislature has previously required a 24-month, and now a 30-month, public notice period prior to the implementation of area code relief.⁵⁹

There are compelling reasons for the Commission to preclude NXX rationing until a state actually adopts an NPA relief plan. The requirement to develop a date and method of implementation serves to prompt states to consider area code relief *well before* jeopardy situations are upon them. Once jeopardy is imminent, states will undoubtedly be propelled towards rationing. As SBC noted, the timing of area code relief should be such that rationing is avoided. “Code rationing creates significant hardships for the industry and for consumers and should not be considered a normal part of area code relief The Commission should set the expectation that area code relief will be provided in a timely fashion and that NXX code rationing should be an extremely rare occurrence.”⁶⁰ MCI WorldCom agrees. Lotteries are by definition inequitable (and unlawful under Section 251(e)(1)), and thus should be permitted only in exigent circumstances and as a last resort.

Thus, the Commission should clarify that under the *NPA Relief Order*, the full extent of state responsibility is to establish a date of relief and a proposed method of relief, rather than to complete

⁵⁸ CCTA at 11-16; California at 8; Connecticut at 4; Maine at 3-4; Massachusetts at 8; MediaOne at 5-11; NARUC at 3-4; New Hampshire at 2; Pennsylvania PUC at 6-7.

⁵⁹ MediaOne at 5; California PUC at 12.

⁶⁰ SBC at 2.

the detailed aspects details of relief plans.⁶¹ Such a clarification should place states in a better position to comply with the Commission's national guidelines prior to rationing numbers. The Commission need not mandate that states resolve every implementation-related detail regarding an NPA relief plan before proceeding with NXX rationing. By requiring that a date and implementation method be selected, the Commission would effectively preclude state commission from substituting NXX rationing for NPA relief, while not tying state commissions' hands in their pursuit of alternative measures for numbering reform.

IV. THE NPA RELIEF ORDER PROVIDES A WORKABLE PROCESS THROUGH WHICH STATES CAN GAIN APPROVAL TO IMPLEMENT INNOVATIVE NUMBERING SOLUTIONS

Connecticut has expressed concern that the Order removes incentives for the states to develop alternative NXX conservation measures.⁶² That is incorrect. To the contrary, the *NPA Relief Order* provides states the opportunity to gain additional authority from the Commission to implement alternative measures. The Commission emphasized that it is "very interested in working with state commissions that have additional ideas for innovative number conservation methods We therefore encourage such state commissions, prior to the release of any order implementing a number conservation plan or number pooling trial, to request from the Commission an additional, limited, delegation of authority to implement these proposed conservation methods."⁶³

The Massachusetts commission states that it is "in a quandary over whether to proceed as planned and implement code conservation efforts, [and in particular, previous plans for "virtual

⁶¹ State commissions should not be required, for example, to decide upon permissive dialing periods, routing intercept announcements, public notice and billing information, and the scope of all affected NXXs at the outset. These implementation details can legitimately await further state proceedings, and end user input, once the basic matters of relief method and projected implementation date are established.

⁶² Connecticut PUC at 4.

⁶³ NPA Relief Order at ¶ 31.

pooling”] which may run counter to the FCC’s pronouncements in the Opinion, or select an area code relief plan without fully exploring code conservation efforts.”⁶⁴ There is absolutely no need for states to be paralyzed by indecision. Massachusetts should forward its plan to the FCC for review. Contrary to the view that seeking FCC approval is a “lengthy process that may take more time” than a state has, the FCC review process for additional authority has occurred swiftly thus far. For example, the California PUC requested additional authority to conduct lotteries in a letter to the Commission on November 3, 1998,⁶⁵ and was promptly granted this authority one month later.⁶⁶

Plainly, the *NPA Relief Order* does not prohibit states from implementing rate center consolidation, voluntary pools and, in extraordinary instances, code sharing, as long as the measure does not violate the Commission’s general numbering guidelines.⁶⁷ Moreover, once the Commission completes the NRO proceeding, states will likely have additional leeway to implement alternative plans, consistent with the Commission’s determinations.

Focusing on California, MediaOne requests that the Commission grant states limited authority to implement lotteries or other code conservation measures, once the area code relief the area code relief process has been commenced.⁶⁸ MCI WorldCom agrees because of its special circumstances, it may be necessary to allow California to implement lotteries or code conservation meas-

⁶⁴ Massachusetts DTE at 6.

⁶⁵ Letter from Helen M. Mickiewicz, CPUC, to Larry Strickling, Chief, Common Carrier Bureau (Nov. 3, 1998).

⁶⁶ Letter from Yog R. Varma, Deputy Chief, Common Carrier Bureau, to Helen M. Mickiewicz, CPUC (Dec. 1, 1998). While the Bureau’s rapid response is admirable, it would be preferable to provide at least some prior public notice of these and similar requests, so that affected carriers and other entities have any opportunity to express their views to the Bureau before final action is taken.

⁶⁷ NPA Relief Order at ¶¶ 24, 33.

⁶⁸ MediaOne at 9-11.

ures prior to completion of the NRO proceeding.⁶⁹ The FCC should address these instances on a case-by-case basis and evaluate whether any more delegation is warranted. MCI WorldCom believes that by clarifying the *NPA Relief Order* as suggested above, such that a state must set an NPA relief method and date before engaging in NXX rationing, the Commission will go far to balancing the needs of state commission and federal numbering reform in the interim period before release of the FCC's decision on number pooling.


CONCLUSION

For all these reasons, the Commission should reaffirm the limited state authority over NXX conservation set forth in the *NPA Relief Order*, clarify that state commission can engage in NXX allocation and reclamation, in accordance with the Commission's rules, once the type of and date for NPA relief are established, and promptly complete the NRO proceeding to establish national implementation guidelines for number pooling as a number resource optimization method.

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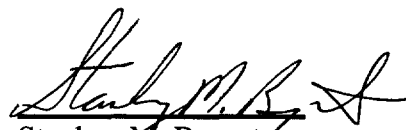
Dated: February 4, 1999

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⁶⁹ The California Public Utilities Commission recently asked the FCC for permission to implement lotteries and to settle any industry disputes arising from those lotteries. The FCC has since granted California's request on an interim basis and is currently considering granting the California PUC permanent authority to conduct lotteries. Comments on the CPUC petition are due tomorrow.

CERTIFICATE OF SERVICE

I, Stanley M. Bryant, do hereby certify that on this 4th day of February, 1999, that I have served a copy of the foregoing document via messenger to the following parties listed below:


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